JAN 25 2001

(5)

No. 00-492

Supreme Court, U.S.
FILED
JAN 25 2001
OFFICE OF THE CLERK

In The

# Supreme Court of the United States

STATE OF ALABAMA,

*Petitioner,*

v.

MICHAEL HERMAN BOZEMAN,

*Respondent.*

**On Writ Of Certiorari To The Supreme Court Of Alabama**

## BRIEF OF THE NATIONAL ASSOCIATION OF EXTRADITION OFFICIALS AS AMICUS CURIAE IN SUPPORT OF THE STATE OF ALABAMA

MARY E. HUNLEY*
Assistant Attorney General
State of Louisiana
Regional Vice President
National Association of
Extradition Officials

ALEXANDER TAYLOR
Assistant Attorney General
State of Virginia
Regional Vice President
National Association of
Extradition Officials

National Association of
Extradition Officials
318 Barnwood Bay
Salt Lake City, Utah 84121
(801) 942-2575

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

27 pp

## QUESTION PRESENTED

Does the transfer of a prisoner from federal custody to state custody for a brief period of time for purposes of a pretrial matter, and prompt transfer back to federal custody before the disposition of outstanding charges, require a dismissal of pending charges under the Interstate Agreement on Detainers Act (IADA) even when no prejudice or harm to the prisoner is either alleged or demonstrated?

TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

TABLE OF AUTHORITIES ..... iii

INTEREST OF THE AMICUS ..... 1

SUMMARY OF ARGUMENT ..... 2

ARGUMENT ..... 4

I. The IADA Should Not Be Applied In A Way That Contradicts Its Stated Goal ..... 4

A. The Purposes Of The Interstate Agreement On Detainers Act ("IADA") And Its "Speedy Trial" Provisions ..... 4

B. Goal Of The "Anti-Shuffling" Provision ..... 6

C. Brief Transfers That May Be Technical Violations Of The "Anti-Shuffling" Provision Are Still Wholly Consistent With The Purposes And Goals Of The IADA ..... 6

D. Two Approaches To The Interpretation Of The IADA ..... 9

E. A Balancing Test Employed On An Ad Hoc Basis Rather Than A Rigid Semantic Approach Better Serves The Purposes Of The IADA ..... 10

II. Defendant's Actions In Failing To Object To His Return To Federal Custody Without Trial Effectively Waived His Right To Object To Any Violation Of The IADA ..... 17

CONCLUSION ..... 21

# TABLE OF AUTHORITIES

Page

CASES

*Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L.Ed.2d 101 (1972) ..... 11, 12, 13, 15

*Brown v. Mitchell*, 598 F.2d 835 (4th Cir. 1979) ..... 6

*Carchman v. Nash*, 473 U.S. 716, 105 S.Ct. 3401 (1985) ..... 4

*Cooney v. Fulcomer*, 886 F.2d 41 (3rd Cir. 1989) ..... 6

*Crooks v. Harrelson*, 282 U.S. 55, 51 S.Ct. 49, 75 L.Ed. 156 (1930) ..... 17

*Gray v. Benson*, 458 F.Supp. 1209 (Kan. 1978), *aff'd*, 608 F.2d 825 (10th Cir. 1979) ..... 14, 15, 20

*In re Adamo*, 619 F.2d 216 (2nd Cir. 1980), *cert. denied*, 449 U.S. 834, 101 S.Ct. 125, 66 L.Ed.2d 52 (1980) ..... 10

*Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed.2d 1461 (1938) ..... 15

*Malone v. United States*, 482 A.2d 768 (D.C. App. 1984) ..... 8

*Price v. State*, 237 Ga. 352, 227 S.E. 2d 368 (1976) ..... 8

*Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981) ..... 10, 13, 16

*Schneckloth v. Bustamente*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) ..... 19

*State ex rel. Fetters v. Holt*, 318 S.E.2d 446 (W.Va. 1984) ..... 7

*State v. Fuller*, 500 N.W.2d 97 (Minn. App. 1997) ...4, 7

*State v. Leisure*, 838 S.W.2d 49 (Mo. App. 1992) ..... 4

TABLE OF AUTHORITIES – Continued

Page

*State v. Sassoon*, 242 S.E.2d 121 (Ala. 1978) ..... 8

*Stroble v. Anderson*, 587 F.2d 830 (6th Cir. 1978), *cert. denied*, 440 U.S. 940, 99 S.Ct. 1289, 59 L.Ed.2d 499 (1979)..... 4

*United States v. Chico*, 558 F.2d 1047 (2nd Cir. 1977) ...4, 8

*United States v. Daniels*, 3 F.3d 25 (1st Cir. 1993)....4, 7

*United States v. Ford*, 550 F.2d 732 (2nd Cir. 1977).....15, 19

*United States v. Hall*, 974 F.2d 1201 (9th Cir. 1992) ..... 4

*United States v. Johnson*, 953 F.2d 1167 (9th Cir. 1992), *cert. denied*, 506 U.S. 879, 113 S.Ct. 226, 121 L.Ed.2d 163 (1992)..... 8, 10, 13

*United States v. Lawson*, 736 F.2d 835 (2nd Cir. 1984)..... 4

*United States v. Mauro*, 436 U.S. 340 (1978) .....5, 15

*United States v. Palmer*, 574 F.2d 164 (3rd Cir. 1978), *cert. denied*, 437 U.S. 907, 98 S.Ct. 3097, 57 L.Ed.2d 1138 (1978)..... 11

*United States v. Perdue Farms, Inc.*, 680 F.2d 277 (2nd Cir. 1982) ..... 16

*United States v. Roy*, 830 F.2d 628 (7th Cir. 1987), *cert. denied*, 484 U.S. 1068, 108 S.Ct. 1033, 98 L.Ed.2d 997 (1988)..... 8, 10, 13

*United States v. Roy*, 597 F.Supp. 1210 (Conn. 1984), *aff'd*, 771 F.2d 54 (2nd Cir. 1985)..... 13

*United States v. Schrum*, 638 F.2d 214 (10th Cir. 1981), *aff'g* 504 F.Supp. 23 (Kan. 1980) ..... 9

*United States v. Taylor*, 861 F.2d 316 (1st Cir. 1988) ...8, 13

TABLE OF AUTHORITIES – Continued

Page

*United States v. Taylor*, 947 F.2d 1002 (1st Cir. 1991), *cert. denied*, 504 U.S. 991, 112 S.Ct. 2982, 119 L.Ed.2d 599 (1992) ..... 4, 8, 10

*United States v. Thompson*, 562 F.2d 232 (3rd Cir. 1977) (en banc), *cert. denied*, 436 U.S. 949, 98 S.Ct. 2858, 56 L.Ed.2d 793 (1978) ..... 9

*United States v. Wells*, 519 U.S. 482, 117 S.Ct. 921, 137 L.Ed.2d 107 (1997) ..... 18

*United States v. Williams*, 615 F.2d 585 (3rd Cir. 1980) ..... 6

*United States v. Witkovich*, 353 U.S. 194, 77 S.Ct. 779 (1957) ..... 17

*Viacom International, Inc. v. F.C.C.*, 672 F.2d 1034 (2nd Cir. 1982) ..... 11

*Wainwright v. Sykes*, 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977), *reh. denied*, 434 U.S. 880, 98 S.Ct. 241, 54 L.Ed.2d 163 (1977) ..... 19

*Yellen v. Cooper*, 828 F.2d 1471 (10th Cir. 1987) ..... 11

STATUTES

Ala. Code §§ 15-9-80-88 (1975) ..... 4

## INTEREST OF THE AMICUS[1]

Your amicus, National Association of Extradition Officials, is a network of cooperating states formed over thirty-six years ago to provide an organization to promote the consistent application of the Uniform Criminal Extradition Act and other rendition statutes including the IADA. The Association's membership includes all fifty states, District of Columbia, Puerto Rico and Virgin Islands.

The Association urges the Court to reverse the decision of the Alabama Supreme Court which held that the State of Alabama violated the "anti-shuffling" provision of Article IV(e) of the IADA. This case presents an important question affecting the Association's interest in successfully accomplishing the transfer of prisoners for the purpose of disposal of outstanding charges which comports with the spirit and purpose of the IADA.

This concern is of particular moment where, as here, a prisoner is transferred for a brief time and promptly returned to the sending state without trial. The law should not be read so literally as to allow this type of procedural defect to provide the basis for the dismissal of outstanding charges.

The purpose of the IADA is to encourage the expeditious and orderly disposition of outstanding criminal

---

[1] The parties have consented to the filing of this brief.

Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

charges in order to minimize the interruption of a prisoner's rehabilitation programs. The analysis employed by the Alabama Supreme Court, if accepted, would drastically undercut the spirit of this Act. Furthermore, none of the actions taken by the State of Alabama can be said to have been contrary to the purpose of the Act. The Association, therefore, urges the Court to reverse the judgment below to insure the integrity of the rendition process.

## SUMMARY OF THE ARGUMENT

While the brief transfer of a prisoner that does not result in a trial may constitute a technical violation of the Interstate Agreement on Detainer Act, such a transfer should not form the basis of a dismissal of outstanding charges.

The purpose of the IADA is to encourage the expeditious and orderly disposition of outstanding criminal charges. One important reason for this purpose is to minimize the interruption of a prisoner's rehabilitation programs occasioned by repeated transfers.

In addressing the issue of this type of transfer two federal circuits (Third and Tenth) have taken a literal approach to the "anti-shuffling" provisions of the Act. This was the approach adopted by the Alabama Supreme Court in this case in finding that a dismissal was warranted. On the other hand, the balance of the circuits that have addressed this issue (First, Second, Fifth, Seventh, and Ninth) have looked to the purpose of the law and

have determined a dismissal is not appropriate where no prejudice is shown to the prisoner's rehabilitation.

A balancing test that examines certain central concerns such as the duration of the transfer and any prejudice such a transfer may have had on the prisoner's rehabilitation better serves the purpose of the Act.

Furthermore, both the nature of the right asserted (statutory) and the nature of the remedy (a remedy harsher than even that provided for violations of certain constitutional rights) underscore the need for a balancing test as opposed to a per se rule.

By taking such a literal approach to the Act, the Alabama Supreme Court did not consider the effect this type of transfer had on the prisoner's rehabilitation. A main reason for the Act is thereby frustrated by such a decision.

Furthermore, it is the position of your amicus that based on Bozeman's obvious familiarity with his rights under the IADA, by failing to object to his return to federal custody without trial effectively waived his right to object to any violation of the IADA.

## ARGUMENT

### I. The IADA Should Not Be Applied In A Way That Contradicts Its Stated Goal.

#### A. The Purposes Of The Interstate Agreement On Detainers Act ("IADA") And Its "Speedy Trial" Provisions.

The goal of the IADA is to encourage the expeditious and orderly disposition of outstanding criminal charges and determination of the proper status of any and all detainers based on untried indictments, information, and complaints. The purpose underlying this goal is that detainers based on such untried charges obstruct programs of prisoner treatment and rehabilitation. *United States v. Hall*, 974 F.2d 1201 (9th Cir. 1992); *Carchman v. Nash*, 473 U.S. 716, 720, 105 S.Ct. 3401, 3403 (1985); *State v. Fuller*, 560 N.W.2d 97 (Minn. App. 1997); *State v. Leisure*, 838 S.W.2d 49 (Mo. App. 1992). In fact, some courts state that the main purpose of the Act is to prevent interruption of prisoner rehabilitative efforts. *United States v. Daniels*, 3 F.3d 25, 27 (1st Cir. 1993); *United States v. Taylor*, 947 F.2d 1002, 1003 (1st Cir. 1991). A second purpose of the Act is the elimination of possible adverse psychological effects upon a sentenced prisoner created by the presence of long-standing detainers in his prison file. *See, e.g. United States v. Lawson*, 736 F.2d 835, 839 (2nd Cir. 1984); *Stroble v. Anderson*, 587 F.2d 830, 835-36 (6th Cir. 1978), *cert. denied*, 440 U.S. 940, 99 S.Ct. 1289, 59 L.Ed.2d 499 (1979); *United States v. Chico*, 558 F.2d 1047, 1048-49 (2nd Cir. 1977). This Act is codified in Alabama in Sections 15-9-80 through 15-9-88 of the 1975 Code of Alabama. (Appendix to Petition for Certiorari at 32-47).

Article III and Article IV are the provisions of the IADA used to effectuate the goal of this Act. *United States v. Mauro*, 436 U.S. 340, 349, 98 S.Ct. 1834, 1842 (1978). Article III provides the procedure used by prisoners, who have detainers filed against them, to demand a speedy disposition of the charges giving rise to the detainers. If the prisoner demands a speedy trial pursuant to the guidelines of Article III, the jurisdiction which filed the detainers is required to bring him to trial within 180 days.

Article IV, on the other hand, provides the procedure used by prosecutors who have lodged a detainer against a prisoner in another jurisdiction. This Article allows such a prosecutor to secure temporary custody over a prisoner for disposition of outstanding charges against the prisoner. Article IV(c) requires trial to commence within 120 days of the prisoner's arrival in the requesting jurisdiction unless a continuance is granted or good cause is shown in open court with the prisoner or his counsel present.

Article III(d) and Article IV(e) both contain "anti-shuffling" provisions which are essentially identical and provide:

"If a trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."

### B. The Goal Of The "Anti-Shuffling" Provision.

The goal of the Anti-Shuffling provision, Article IV(e), "is to insure prompt disposition of detainers." *Brown v. Mitchell*, 598 F.2d 835, 837 (4th Cir. 1979), *cert. denied*, 449 U.S. 1123, 101 S.Ct. 939, 67 L.Ed.2d 109 (1981). This provision "furthers the goal of the IADA which is to prevent transfer back and forth between competing jurisdictions, its theory being that such transfers undermine the right to speedy trial and the rehabilitative process of the system in which the prisoner is currently serving a sentence." *Cooney v. Fulcomer*, 886 F.2d 41, 44 (3rd Cir. 1989). (Citing *United States v. Williams*, 615 F.2d 585, 588 (3rd Cir. 1980)).

### C. Brief Transfers That May Be Technical Violations Of The "Anti-Shuffling" Provisions Are Still Wholly Consistent With The Purposes And Goals Of The Interstate Agreement On Detainers Act.

Bozeman was transferred very briefly on January 23, 1997, from federal custody in Marianna, Florida, to Covington, Alabama, for arraignment on January 24, 1997, on state charges. He was returned to federal prison the very next day (Appendix to Petition for Certiorari at 28). Although his state charges were not disposed of on January 24, 1997, there is neither evidence nor any allegation that this brief transfer had an impact on his rehabilitation programs at the federal prison. As the circuit court judge in this case said:

> "It made much sense to bring him into the county briefly to see to those matters and

> thereupon return him to the surroundings to which he was accustomed. That course appears to have been conservative of the defendant's interest in maintaining any course of rehabilitation available to him in federal prison. He certainly would not receive much rehabilitation in county jail [as a pre-trial detainee]." (Appendix to Petition for Certiorari at 28.)

Even though brief transfers technically constitute "anti-shuffling" violations, they can, nevertheless, have little or no impact on rehabilitative programs and still permit the prisoner to have his case disposed of within the IADA "speedy trial provisions." For example, in the case at bar, the Covington prosecutor's office secured the custody of Bozeman for a second time, pursuant to Article IV, one month after his arraignment. He was convicted on all five counts of the indictment the next day, February 28, 1997. (Petition for Certiorari 7 citing C.120-21; R. 192-93) He was sentenced on May 21, 1997. (Petition for Certiorari 8 citing C.108-109) Bozeman's charges were clearly disposed of within the 120 day "speedy trial" provision of Article IV(c). In similar situations, other courts have ruled that a dismissal was not required where the "anti-shuffling" provision was technically violated when the prisoner was returned a second time to the state for trial within the IADA "speedy trial" deadline. *State ex rel. Fetters v. Hott,* 318 S.E.2d 446, 448-449 (W.Va. 1984); *See also State v. Fuller,* 560 N.W.2d 97 (Minn. App. 1997).

Brief transfers, such as the one in this case, may actually further the Act's purpose of not having a prisoner's rehabilitation programs interrupted for unreasonable periods of time. *See e.g. United States v. Daniels, supra,* 3 F.3d at 27-28 (The First Circuit, at page 28, footnote 3,

states that it could "hardly think of a greater disruption in rehabilitative services" than when a prisoner has to remain in the custody of a requesting state from the date of his arraignment until the date his case is finally disposed of.) *See also United States v. Taylor*, 947 F.2d 1002, 1003 (1st Cir. 1992), *cert. denied*, 504 U.S. 991, 112 S.Ct. 2982 (1992) (Brief transfer allowed for speedy arraignment). Although dismissal is the remedy provided in the "anti-shuffling" provisions, the majority of federal courts that have addressed the issue of brief transfers such as these have held that dismissal is not mandatory where the transfer did not affect the prisoner's rehabilitation. *United States v. Johnson*, 953 F.2d 1167, 1171 (9th Cir. 1992); *United States v. Taylor*, 861 F.2d 316, 319 (1st Cir. 1988); *Malone v. United States*, 482 A.2d 768 (D.C. App. 1984); *See also United States v. Roy*, 830 F.2d 628, 636 (7th Cir. 1987) and *State v. Sassoon*, 242 S.E.2d 121, 123 (Ala. 1978) (citing *United States v. Chico, supra*, 558 F.2d at 1049).

The "anti-shuffling" provisions were not intended to be used as a sword by prisoners for the purpose of dismissing potentially serious crimes based solely on technical violations. Yet this appears to be the only purpose served by dismissing charges where the violation covered a brief time period having little, or no, impact on the prisoner's rehabilitation programs. Justice Hill, concurring in *Price v. State*, 237 Ga. 352, 357, 227 S.E.2d 368, 370 (1976) anticipated that intelligent prisoners (referring to them as "interstate bandits") could use the IADA to have their charges dismissed in different jurisdictions instead of seeking to expedite their trials pursuant to the same Act. *See also State v. Sassoon, supra*, 242 S.E.2d at 123. The present appeal presents a very similar case. Bozeman was not interested in having a quick arraignment and

trial in Covington County so that he could return to his rehabilitation programs in federal prison. He was clearly only interested in getting his state charges dismissed. This is evidenced by his failure either to request that he remain in Covington County until his trial or object to the notice of arraignment as opposed to trial. Instead, he filed a motion to dismiss these charges on the very same day he returned to federal custody on January 24, 1997. (Appendix to Petition for Certiorari at 28) The IADA was never intended to be used in this manner. Allowing prisoners to do so only thwarts the purpose of the Act.

### D. Two Approaches To The Interpretation Of The IADA

The issue of whether or not a brief transfer under the IADA without a trial is consistent with the purposes of the Act or is a sufficient violation of the Act to warrant dismissal of the outstanding charges has been addressed in different ways by the various federal circuits. A "split" exists among these circuits.

The Third and Tenth Circuits have read the Act literally and found it to require a dismissal under such circumstances. *See, e.g. United States v. Thompson*, 562 F.2d 232, 234 (3rd Cir. 1977) (*en banc*), *cert. denied*, 436 U.S. 949, 98 S.Ct. 2858, 56 L.Ed.2d 793 (1978); *United States v. Schrum*, 638 F.2d 214 (10th Cir. 1981), *aff'g*, 504 F.Supp. 23 (Kan. 1980).

On the other hand, the majority of circuits (First, Second, Fifth, Seventh and Ninth Circuits) have chosen to examine the particular circumstances in light of the purpose of the law and have consistently held no dismissal is

warranted. *See, e.g. United States v. Taylor*, 947 F.2d 1002 (1st Cir. 1991), *cert. denied*, 504 U.S. 991, 112 S.Ct. 2982, 1191 L.Ed.2d 599 (1992); *United States v. Roy*, 771 F.2d 54 (2nd Cir. 1985), *aff'g*, 597 F.Supp. 1210 (Conn. 1984); *Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981); *United States v. Roy*, 830 F.2d 628 (7th Cir. 1987) and *United States v. Johnson*, 953 F.2d 1167 (9th Cir. 1992), *cert. denied*, 504 U.S. 809, 113 S.Ct. 226, 121 L.Ed.2d 163 (1992).

Your amicus believes that the latter approach, which looks to the spirit and purpose of the Act rather than interpreting the Act so narrowly as to defeat that purpose, is correct. Unfortunately, none of the courts employing this approach has articulated any test by which each case can be judged. As a result, these decisions offer little predictive value.

Within this framework, your amicus would urge that this Court disclaim establishing a per se rule but instead establish a balancing test to be employed on an ad hoc basis to determine whether the harsh remedy of dismissal is warranted under these circumstances.

### E. A Balancing Test Employed On An Ad Hoc Basis Rather Than A Rigid Semantic Approach Better Serves The Purposes Of The Interstate Agreement On Detainers Act.

It is a well-established principle of statutory construction that a statute should not be applied strictly in accordance with its literal meaning where to do so would pervert its manifest purpose. *In re Adamo*, 619 F.2d 216, 221-222 (2nd Cir 1980), *cert. denied*, 449 U.S. 834, 101 S.Ct. 125, 66 L.Ed.2d 52 (1980).

While your amicus recognizes that courts should seek to apply the law as drafted, it is also true that the "surest way to misinterpret a statute or a rule is to follow its literal language without reference to its purpose," or without regard to a result that would be unreasonable or absurd. *Viacom International, Inc. v. F.C.C.*, 672 F.2d 1034, 1040 (2nd Cir. 1982).

Although the literal meaning of the words chosen by the drafters should be respected, we urge this Court not to follow a rigid semantic approach to statutory construction which would override common sense and evident statutory purpose.

The IADA has been described variously as a "set of procedural rules which do not involve fundamental constitutional rights." *United States v. Palmer*, 574 F.2d 164, 167 (3rd Cir. 1978), *cert. denied*, 437 U.S. 907, 98 S.Ct. 3097, 57 L.Ed.2d 1138 (1978) and that the "protections created by the IADA are statutory rights which are not founded upon constitutional rights." *Yellen v. Cooper*, 828 F.2d 1471, 1474 (10th Cir. 1987).

Admittedly, the application of a constitutional standard is inappropriate when the violation of a statutory right is at issue. Nevertheless, this Court's decision related to the right to a speedy trial in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) is instructive. *Barker* addressed certain central concerns that persuaded this Court that a balancing test to be applied on an ad hoc basis best served those concerns. In so holding, this Court rejected two suggested approaches which the court described as "rigid". Your amicus suggests to the Court that the same central concerns exist in this case and

therefore we urge this Court to choose the same alternative in this case.

In *Barker,* this Court cited such basic concerns involved in the speedy disposal of charges as the necessity that all defendants be treated according to "decent and fair procedures," that the backlog of cases has lead to manipulation of the system by defendants, the cost of lengthy pretrial detention and, most importantly for our purposes, the delay between arrest and punishment may have a detrimental effect on rehabilitation. *Barker v. Wingo, supra,* 407 U.S. at 519-520, 92 S.Ct. at 2186-87.

In deciding that a balancing test was appropriate, this Court also took into consideration the harshness of the remedy. Like the IADA, violation of the Sixth Amendment speedy trial provision requires dismissal. In this context, the *Barker* Court observed "[t]his is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free without having been tried". *See also* N.16, *Barker v. Wingo, supra,* 407 U.S. at 522, 92 S.Ct. at 2188.

Ultimately, the court specifically rejected the "inflexible approaches" and accepted a balancing test, in which the conduct of both the prosecution and the defendant are weighed. In the court's view, such a test "necessarily compels courts to approach speedy trial cases on an ad hoc basis." The Court then identified four factors to be assessed when a court determines if a Sixth Amendment violation took place: length of delay, the reason for the delay, defendant's assertion of his right, and prejudice to the defendant. *Barker v. Wingo, supra,* 407 U.S. at 530, 92 S.Ct. at 2192.

Your amicus urges this Court to follow the reasoning in *Barker* and apply a balancing test in this case. Although none of the circuit courts that examined this issue on an ad hoc basis followed a specific balancing test, these courts have consistently concentrated on certain factors which could provide some guidance in the formulation of such a test.

Where there is a delay because of the kind of transfer that occurred herein, circuits have balanced the length of the interruption against any prejudice to the prisoner that may have resulted. *Sassoon v. Stynchombe, supra,* 654 F.2d at, 374 (5th Cir. 1981) (refusing to apply Article IV(e) mechanically because the inmate's interest in pursuing his rehabilitative education in the sending jurisdiction was not prejudiced . . . a brief removal and prompt return prior to trial is consonant with the intention of the IADA); *United States v. Taylor,* 861 F.2d 316 (1st Cir. 1988) (IADA not violated when prisoner returned without a trial because he suffered only a one day interruption that did not prejudice him); *United States v. Johnson, supra,* 953 F.2d at 1170 (9th Cir. 1992), *cert. denied,* 506 U.S. 879, 113 S.Ct. 226, 121 L.Ed.2d 163 (1992) (brief transfers permissible where there was no evidence that they interfered with the prisoner's interest or participation in rehabilitation program or where he was denied, threatened with the denial of, or feared losing any privileges because of the pending charges); *United States v. Roy,* 597 F.Supp. 1210 (Conn. 1984); *aff'd by United States v. Roy,* 771 F.2d 54 (2nd Cir. 1985) (no evidence that prisoner's brief transfer obstructed his rehabilitation . . . no indication that he suffered any adverse psychological effects as a result of his brief stay); *United States v. Roy, supra,* 830 F.2d at 636

(7th Cir. 1987) (no violation of anti-shuffling provisions of Article IV of the IADA where there was no real interruption of prisoner's state imprisonment resulting from an overnight stay at another facility). It should be noted that, although prejudice is not a dispositive factor in determining whether an indictment should be dismissed due to a violation of Article IV(e), no policy of the IADA would be advanced by finding a dismissal proper where no prejudice whatsoever existed.

For several reasons, your amicus urges this Court to reject the restrictive interpretation of the IADA taken by the Third and Tenth Circuits and the Alabama Supreme Court in this case. First, the issue does not involve a fundamental right or a constitutional rule. Rather, this is a rule governing a statutory, nonfundamental right. This is an important consideration in light of the harshness of the remedy.

> Clearly Article IV(e) of the IADA amounts to nothing more than a procedural rule, and the right it protects in no way affects the fairness and accuracy of the fact-finding procedure. Nor does it preserve or affect other due process or trial rights. Rather, it involves an unrelated right to rehabilitation without interruption in connection with incarceration on a prior sentence. Thus, a claim under IV(e) can hardly be construed as jurisdictional . . . The fact that Congress has provided a stringent remedy for violation of the rule does not alter the procedural nature or nonfundamental basis of the rule itself.

*Gray v. Benson*, 458 F.Supp. 1209, 1213 (Kan. 1978), *aff'd*, 608 F.2d 325 (10th Cir. 1979) (citations omitted).

The remedy prescribed by the IADA is more severe than that provided even for violations of certain constitutional rights. *See Barker v. Wingo, supra,* 407 U.S. at 522, 92 S.Ct. at 2188). Both the nature of the right (statutory) and the nature of the remedy (dismissal) underscore the need for a balancing test as opposed to a per se rule.

Another factor is the reason for the transfer. The inquiry is whether the transfer was initiated by the prisoner or the prosecution. *See e.g. United States v. Ford,* 550 F.2d 732 (2nd Cir. 1977), *aff'd sub nom. United States v. Mauro,* 436 U.S. 340, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978) (rights under the Act are waived by a prisoner's request for transfer).

The right protected by Article IV(e) is that of a prisoner to have his rehabilitation free of the interruptions occasioned by repeated transfers. *United States v. Ford, supra,* 550 F.2d at 742 (2nd Cir. 1977), *aff'd United States v. Mauro,* 436 U.S. 340, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978). This right of a prisoner to uninterrupted rehabilitation is purely statutory. It is unlike a fundamental constitutional right which can be waived only under the strict waiver standard set out in *Johnson v. Zerbst. See Gray v. Benson,* 458 F.Supp. 1209 (Kan. 1978), *aff'd,* 608 F.2d 825 (10th Cir. 1979) (citing *Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed.2d 1461 (1938).)

Under the facts in this case, the literal application of the dismissal provision required that the Act's intended purpose be disregarded. The violation of the IADA was a trifling and insignificant one, in the nature of a procedural defect. To release Bozeman by a mechanical application of the statute would constitute an inequity

and "a result that Congress manifestly would not have wanted if the prospect of such application had been considered." *United States v. Perdue Farms, Inc.*, 680 F.2d 277, 286 (2nd Cir. 1982) (Newman, J., concurring).

Your amicus urges this Court to accept the more expansive interpretation of the statute taken by the majority of circuits. First, no purpose of the drafters in enacting the IADA was thwarted by the conduct of the Alabama authorities. Bozeman made no claim that his overnight detention in the Covington County jail prejudiced any rehabilitation or education programs he was undergoing at the federal facility in Florida. Furthermore, there has been no indication that Bozeman suffered any adverse psychological effects as a result of his brief stay in Covington County on January 23-24, 1997. In fact, his brief detention in state custody followed by his prompt return to federal custody worked to his benefit rather than to his detriment. *See Sassoon v. Stynchombe, supra*, 654 F.2d at 374 (5th Cir. 1981) (release under Article IV(e) of the IADA "not justified where no legitimate interest of the prisoner is defeated by the violation . . . [n]o protection is necessary where no injury is threatened"). In other words, had Bozeman been kept in state custody from arraignment through sentencing, the interference with any rehabilitative programs he may have been undergoing would have been worse. Being "shuffled" back to federal prison actually promoted the purpose of the IADA. Additionally, all pending state charges were processed against him in an expeditious and orderly manner and all within the 120 day period required under the IADA.

The instant case presents an attempted misuse of the Act. Bozeman is seeking to use the provisions of the IADA not for the purpose of protecting any legitimate interest he may feel is at stake but rather to simply secure his release from the sentence imposed by the State of Alabama.

Under these circumstances, justice and good sense compel an interpretation of the IADA which conforms to the intention and spirit of the Act even if it is not within the letter of the enactment. *See United States v. Witkovich*, 353 U.S. 194, 199, 77 S.Ct. 779, 782, 1 L.Ed.2d 765 (1957) (the "tyranny of literalness" should be avoided); *Crooks v. Harrelson*, 282 U.S. 55, 60, 51 S.Ct. 49, 50, 75 L.Ed. 156 (1930) (departure from plain language of a statute justified if adherence results in an absurdity which shocks "the general moral or common sense").

This conclusion is buttressed by Article IV of the IADA, which states in part, "[t]his agreement shall be liberally construed so as to effectuate its purposes."

This Court should recognize that a brief interruption of confinement that neither poses a threat to a prisoner's rehabilitation nor denies him any privileges is insufficient to require a dismissal of outstanding charges under Article IV(e) of the IADA.

## II. Defendant's Actions In Failing To Object To His Return To Federal Custody Without Trial Effectively Waived His Right To Object To Any Violation Of The IADA.

Bozeman was transferred to Alabama on January 23, 1997, and arraigned the next day, January 24, 1997. From

the transcript of that hearing it is clear that those involved understood that Bozeman was to be returned to Florida after the arraignment. Bozeman was informed by the court that he was there for purposes of arraignment (R. January 24, 1997 Arraignment 5); that the court would allow him to complete the appointment of counsel form "before you leave" (R. January 24, 1997 Arraignment 11); and the court directed him to make sure he had the means to stay in communication with his attorney. Defense counsel then informed the court that he had Bozeman's address (R. January 24, 1997 Arraignment 12). Also at that time, defense counsel notified the court of possible violations of the IADA which he had to investigate (R. January 24, 1997 Arraignment 4). He was then transferred back to federal custody that same day. Even though Bozeman had counsel appointed to him at his arraignment, he filed an obviously already prepared pro se Motion to Dismiss his outstanding Alabama charges on the basis of a violation of Article IV(e) of the IADA on January 24, 1997 as well. (Petition for Certiorari 6 citing C.8-10)

Your amicus urges this Court to find that by failing to object to his transfer back to federal prison without a trial Bozeman impliedly consented to this transfer and thereby waived this violation or, in the alternative, is estopped, under the theory of "invited error", from asserting this right under the IADA. "A party may not complain on appeal of errors that he himself invited or provoked the [district] court . . . to commit." *United States v. Wells*, 519 U.S. 482, 486, 117 S.Ct. 921, 925, 137 L.Ed.2d 107 (1997) (citations omitted).

Bozeman is obviously someone very familiar with the protections offered by the IADA and understood his rights thereunder. Based on his actions, it appears that Bozeman had full knowledge of the IADA at the time he filed his pro se Motion to Dismiss. The fact that he knew to file his pro se Motion to Dismiss on the very day he was returned to federal custody indicates how well-versed he really was. Under these circumstances, there can be no real dispute that Bozeman knew his rights under the IADA. A knowing and intelligent waiver of the anti-shuffling provision therefore can be inferred from his failure to object to his transfer.

Moreover, because this is a statutory right, the waiver standard is not as strict as that for waiver of certain fundamental or constitutional rights. The concept of a knowing and intelligent waiver only applies to basic constitutional rights safeguarding a criminal defendant's right to a fair trial. This high standard for waiver does not apply in situations involving other constitutional or statutory rights. *Schneckloth v. Bustamonte*, 412 U.S. 218, 237, 93 S.Ct. 2041, 2052, 36 L.Ed.2d 854 (1973)

The basis of the statutory right at stake is to promote the rehabilitation of a prisoner that is free of the interruptions resulting from repeated transfers. *United States v. Ford, supra*, 550 F.2d at 742. This type of right is considered procedural or nonfundamental and in no way affects the fairness and accuracy of the fact-finding process. Balanced against this right is the substantial public interest in the finality of criminal convictions. *Wainwright v. Sykes*, 433 U.S. 72, 90, 97, S.Ct. 2497, 53 L.Ed.2d 594 (1977), *reh. denied*, 434 U.S. 880, 98 S.Ct. 241, 54 L.Ed.2d 163 (1977).

Based on his obvious familiarity with his rights under the IADA and considering the nature of the right at stake, your amicus asserts that Bozeman essentially consented to his transfer back to federal authorities when he raised no objection to the nature of the transfer. This "consent" was in the nature of a waiver of the violation or as an estoppel which prevents him from asserting the right. Either of these would prevent him from succeeding in this case.

The procedural defect in this case had no effect whatsoever on the fundamental fairness of the proceedings against him. Neither has Bozeman demonstrated any prejudice to his rehabilitation as a result of the challenged transfer.The public's substantial interest in the preservation of convictions outweighs a prisoner's interest in the statutory remedy for a violation of Article IV(e). *See Gray v. Benson, supra,* 458 F.Supp. at 1215.

## CONCLUSION

This Court should reverse the decision of the Alabama Supreme Court.

Respectfully submitted,

MARY E. HUNLEY*
Assistant Attorney General
State of Louisiana
Regional Vice President
National Association of
Extradition Officials

ALEXANDER TAYLOR
Assistant Attorney General
State of Virginia
Regional Vice President
National Association of
Extradition Officials

National Association of
Extradition Officials
318 Barnwood Bay
Salt Lake City, Utah 84121
(801) 942-2575

*Counsel of Record*